

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

ORIGINAL

3 -----X
4 ANTOINE JOHNSON,

5 Plaintiff,

6 -against-

7 ALFRED MASTARRIGO,

8 Defendant.
9 -----X

COMPLAINT

JURY TRIAL DEMANDED

08 CV 1324
JUDGE KARAS

10 **NOW COMES** plaintiff, by his attorneys, Shafran & Mosley,
11 P.C., of 350 Fifth Avenue, Suite #2310, New York, New York 10118,
12 as and for his complaint against defendant herein, alleges the
13 following on information and belief:

14 **PRELIMINARY STATEMENT**

15 1. The plaintiff brings this action to recover damages
16 resulting from certain acts and/or omissions of the defendant. As
17 set forth with specificity below, said acts and/or omissions
18 constituted negligence in the ownership, operation, maintenance,
19 management and control of a motor vehicle upon the public roadways
20 of the State of New York.

21 **JURISDICTION**

22 2. This action is brought in the United States District
23 Court because plaintiff does not share residence with any defendant
24 and the amount in controversy exceeds \$ 75,000, this case is
25 correctly in federal court for diversity of citizenship reasons.
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FILED
U.S. DISTRICT COURT
2008 FEB 11 AM 9:29
S.D. OF N.Y.

1 Under 28 U.S.C. § 1332(a)-(b) and the common law of the State of New
2 York.

3 **VENUE**
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5 3. Pursuant to 28 USC § 139 (b), this action properly lies
6 in the Southern District of New York because the claim arose in
7 this judicial district.
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9 **PARTIES**
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11 4. That at all the times hereinafter mentioned, and at
12 the time of the commencement of the action, defendant ALFRED
13 MASTARRIGO resided and does reside at P.O. Box 569, Greenwood Lake,
14 situated in the County of Orange and State of New York.

15 5. That at all the times hereinafter mentioned,
16 defendant ALFRED MASTARRIGO owned a certain motor vehicle commonly
17 known as a 2003 Chevrolet New York plate number CMW-4020 or similar
18 thereto (hereinafter referred to as the "Chevrolet").

19 6. That at all the times hereinafter mentioned
20 defendant ALFRED MASTARRIGO operated the afore described Chevrolet.

21 7. That at all the times hereinafter mentioned
22 defendant ALFRED MASTARRIGO maintained and managed the afore
23 described Chevrolet.

24 8. That at all the times hereinafter mentioned
25 defendant ALFRED MASTARRIGO controlled the afore described
26 Chevrolet.
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1 9. That at all the times hereinafter mentioned
2 defendant ALFRED MASTARRIGO controlled the afore described
3 Chevrolet.

4 10. That at all the times hereinafter mentioned
5 defendant ALFRED MASTARRIGO had and assumed an affirmative duty to
6 exercise reasonable care in the, operation, maintenance, management
7 and control of the afore described Chevrolet.

8 11. That at all the times hereinafter mentioned
9 defendant ALFRED MASTARRIGO operated the afore described Chevrolet
10 with the knowledge, permission and consent of its owner.

11 12. That at all the times hereinafter mentioned, that
12 roadway, highway or thoroughfare commonly known as Hyman Boulevard
13 at or near its junction with the Robinson Avenue were and still are
14 public streets, highways or roadways in the County of Richmond,
15 State of New York.

16 13. That on or about the 13th day of May, 2006, while
17 plaintiff ANTOINE JOHNSON was operating a motor vehicle, and while
18 exercising reasonable care and due diligence hereat, he was caused
19 to be grievously injured when said Chevrolet did strike and
20 otherwise collided with the said plaintiff's vehicle in the rear at
21 the afore described location.

22 14. That the occurrence as described herein and the
23 results and consequences thereon were caused by the carelessness,
24 recklessness and negligence of defendant, her agents, servants,
25 licensees and/or employees concerning the ownership, operation,
26 maintenance, management and control of the afore described vehicle;
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1 in failing to have said vehicle under control; in failing to see
2 what there was to be seen; in failing to keep an adequate and
3 proper lookout; in failing to maintain the said vehicle in a
4 reasonably safe and proper condition; in failing to have steered
5 the vehicle in such a manner as to avoid the occurrence; in failing
6 to apply the brakes to have slowed down or to have stopped so as to
7 prevent the occurrence; in failing to be attentive to the
8 conditions then and there existing; in being oblivious to the
9 conditions then and there existing; in being oblivious to the
10 presence of other motorists lawfully situated at the afore
11 described location; in failing to yield the right of way; in
12 carelessly, recklessly and negligently failing to avoid striking
13 plaintiff's vehicle; in failing to have said vehicle under control;
14 in operating said vehicles at an unreasonable rate of speed; in
15 failing to obey the traffic signals and roadway signs or markings
16 then and there existing; in failing to apply the brakes or
17 otherwise maneuver said vehicle so as to lessen the impact with
18 said plaintiff's vehicle; in colliding with plaintiff's vehicle;
19 in carelessly, recklessly and negligently failing to avoid the
20 collision; and in carelessly, recklessly and negligently causing
21 the collision wherein the vehicle in which plaintiff was situated
22 was struck by said Chevrolet from the side; in violating each and
23 every rule, regulations, code, statute or ordinance governing the
24 exercise of reasonable care and due diligence in operating a motor
25 vehicle upon the public streets, highways or roadways in the County
26 of Orange, State of New York, including but not limited to the
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1 Vehicle and Traffic Law of the State of New York, including VTL
2 section 1101, 1180, 1190, 1163, 1160, 1128, 1129, 1111, 1140, 1141,
3 1142, 1146, 1151, 1163, 1110, and further, plaintiff specifically
4 reserves the right to rely upon the doctrine of res ipsa loquitur
5 for resolution of any relevant issues raised at the time of trial.

6 15. That by reason of the foregoing, plaintiff, ANTOINE
7 JOHNSON, has been caused to be rendered sick, sore and lame, and to
8 suffer certain serious, severe and permanent personal injuries and
9 conditions, including but not limited to multiple damaged cervical
10 discs as confirmed by MRI, and has under went surgical laminectomy,
11 fusion and insertion of metallic hardware and bone grafts, and has
12 been caused to be treated at a hospital facility and to incur
13 expenses for medical and therapeutic care and treatment, and has
14 been caused to suffer loss of earnings, past earnings and economic
15 damage, and has otherwise been caused to be damaged thereby.

16 16. That no conduct on the part of the plaintiff herein
17 contributed to the occurrence in any manner whatsoever.

18 17. That plaintiff has sustained a "serious injury" as
19 defined in the Comprehensive Automobile Insurance Reparations Act
20 contained within the Insurance Law of the State of New York.

21 18. That plaintiff is entitled to recover for such
22 economic and "non-economic" losses as defined in the Comprehensive
23 Automobile Insurance Reparations Act as contained in the Insurance
24 Law of the State of New York.

25 19. That defendant shall be answerable in damages as to
26 the full amount of any judgment without regard to the apportionment
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1 of liability, as this matter falls under one or more of the
2 exceptions as contained in Section 1602 of Article 16 of the Civil
3 Practice Laws and Rules.

4 20. That by reason of the foregoing, plaintiff has been
5 caused to be damaged in the sum which exceeds the jurisdictional
6 limits of any other Court of competent jurisdiction.

7
8 **WHEREFORE**, plaintiff demands judgment against defendant in the
9 sum which exceeds the jurisdictional limits of any other Court of
10 competent jurisdiction, plus the interest and costs of this action.

11 Dated: February 5th, 2008
12 New York, N.Y.

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